IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 253 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI
and
Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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NEW INDIA ASSURANCE CO.LTD.

Versus

SHARDABEN NANUBHAI SUCHAL

Appearance:

1. First Appeal No. 253 of 1987
MR RAJNI H MEHTA for Petitioner No. 1
NOTICE SERVED for Respondent No. 1-2
MR KG SHETH for Respondent No. 3
Mr. B.Y. Mankad, AGP for Respondent No. 4

CORAM : MR.JUSTICE M.H.KADRI
and
MR.JUSTICE K.A.PUJ

Date of decision: 01/05/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE M.H.KADRI)

1. The Insurance Company has filed this appeal under Section 110-D of the Motor Vehicles Act, 1939 ('Act' for short), challenging the judgment and award dated September 30, 1986, passed by the Motor Accidents Claims Tribunal (Aux.), Surat, in MAC Petition No.176 of 1983.

2. On April 30, 1982, the respondent No.3 was

driving tractor No. GRD 8018 of the ownership of the respondent No.4, namely, the Deputy Director of Agricultural, Navsari, and was proceeding from Surat to Dhulia Road. The deceased Nanubhai was sitting on the mudguard of the tractor. The deceased was, at the relevant time, serving in the Agricultural Department as Mechanic and was getting Rs.800/- per month as salary. The tractor was driven in rash and negligent manner by the respondent No.3. Due to rash and negligent driving by the driver of the tractor, the tractor had tumbled down and the deceased was thrown on the road and had sustained serious injuries, which resulted into his death. The heirs of the deceased Nanubhai filed claim petition claiming compensation of Rs.1,50,000/- from the respondents Nos. 3 and 4, the driver and the owner of the tractor. The appellant-Insurance Company, with whom the tractor was insured, was joined as party-opponent in the claim petition.

3. The appellant had contested the claim petition by filing its written statement at Exh.34, inter alia, contending that the deceased was occupying the seat on the mudguard of the tractor unauthorizedly and, hence, the Insurance Company was not liable to pay compensation. It was contended that the deceased was travelling on the tractor against the terms of the policy. Therefore, the Insurance Company cannot be held liable to pay or reimburse the compensation, which may be awarded to the original claimants.

4. The Tribunal awarded an amount of Rs.70,000/- to the heirs of the deceased, Nanubhai, as compensation. The Tribunal held that, out of the compensation of Rs.70,000/-, the driver and the owner of the tractor shall pay a sum of Rs.55,000/- to the claimants whereas the appellant-Insurance Company was directed to pay an amount of Rs.15,000/- to the claimants under Section 92A of the Act on the principle of 'no fault liability'. The Insurance Company has challenged the award of the Tribunal so far as it relates to awarding of the amount of Rs.15,000/- to the claimant under Section 92A of the Act.

5. It may be stated that the driver and the owner of the tractor have not challenged the quantum of compensation and the factum of the accident by filing an appeal. Only the Insurance Company has challenged the award of the Tribunal which directs the Insurance Company to pay the amount of Rs.15,000/- to the claimants under Section 92A of the Act.

6. We have gone through the entire record and proceedings of the appeal. The policy of the insurance of the tractor in question was produced at Exh.56 and Exh.57 before the Tribunal. The deceased Nanubhai on the relevant date was travelling on the mudguard of the tractor as an unauthorized passenger. Therefore, the Insurance Company cannot be held liable for payment of compensation. The Tribunal, in paragraph 12, had also observed that the liability of the Insurance Company will not arise, but, at the same time, directed the Insurance Company to pay the amount of Rs.15,000/- on the principle of 'no fault liability' under Section 92A of the Act. It requires to be mentioned that Section 92A of the Act came to be introduced in the statute from October 1, 1982, whereas the accident had taken place on April 30, 1982. The amendment in Section 92A cannot be applied with retrospective effect as held by the Apex Court in the case of Padma Srinivasan vs. Premier Insurance Co. Limited, reported in AIR 1982 Supreme Court 836. As the accident had taken place prior to amendment in Section 92A of the Act, the Insurance Company cannot be held liable to pay the compensation. Even otherwise, as the deceased was travelling on the mudguard of the tractor against the terms of the policy, no award could have been passed against the Insurance Company on the principle of 'no fault liability'.

7. As a result of foregoing discussion, the appeal is allowed. The judgment and award dated September 30, 1986, passed by the Motor Accident Claims Tribunal (Aux.), Surat, in MAC Petition No.176 of 1983 so far as it directs the Insurance Company to make payment of Rs.15,000/- to the original claimants, is set aside. The claimants shall be entitled to recover the entire awarded amount of Rs.70,000/- from the respondents Nos. 3 and 4 with proportionate costs and interest of the claim petition. The award be modified accordingly. There shall be no order as to costs.

May 1, 2002 (M.H. Kadri, J.)

(K.A.Puj, J.)
(swamy)